

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-281-S**

IN RE:)
)
Application of Palmetto Utilities, Inc. for)
adjustment of rates and charges for, and)
modification to certain terms and conditions)
related to, the provision of sewer service.)

**PREFILED REBUTTAL
TESTIMONY OF
WILLIAM CRAWFORD
ON BEHALF OF PALMETTO
UTILITIES, INC.**

Q. ARE YOU THE SAME WILLIAM CRAWFORD WHO HAS PRESENTED DIRECT TESTIMONY IN THIS MATTER ON BEHALF OF PALMETTO UTILITIES, INC.?

A. I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to address portions of the pre-filed direct testimonies of Dawn M. Hipp, Daniel P. Hunnell, II, and Charles E. Loy on behalf of the Office or Regulatory Staff, or “ORS.”

Q. TO WHICH PORTIONS OF MS. HIPPI’S TESTIMONY DO YOU REFER?

A. I am responding to the portions that describe the parties’ engagement with respect to the ratemaking treatment of the \$18 million paid for facilities acquired from the City of Columbia that was deferred from the Company’s last rate relief proceeding (which I refer to here in as the “\$18 million investment”).

Q. AND TO WHICH PORTIONS OF THE TESTIMONIES OF MR. HUNNELL AND MR. LOY DO YOU REFER?

A. I am responding to the portions pertaining to the Company’s responses to requests made by ORS for books, records, and information requested by ORS to conduct its audit, examination, and inspection in this proceeding. I am also addressing concerns I have with the report prepared by Mr. Loy.

1 **Q. PLEASE EXPLAIN TO THE COMMISSION YOUR CONCERN REGARDING MS. HIPPI'S**
2 **TESTIMONY?**

3 A. My concern is that she mischaracterizes the nature and result of the parties' engagement
4 on the ratemaking treatment to be afforded to the \$18 million investment. Rather than
5 responding directly to my assertion that ORS engaged with the Company in an adversarial
6 and non-constructive manner in the last rate case, Ms. Hipp describes discussions between
7 the parties before and after the last rate case that I mention in my direct testimony, and then
8 makes the astonishing assertion that ORS engaged on this issue in a manner that "narrowed
9 the issues in dispute related to the ... Asset valuation and ratemaking treatment." ORS's
10 conduct has achieved nothing of the sort as the inclusion of this \$18 million investment in
11 the Company's rate base is still wholly in dispute. If anything, ORS's conduct has caused
12 this issue to be broadened, not narrowed.

13
14 **Q. HOW HAS THIS ISSUE BEEN BROADENED?**

15 A. As reflected in the testimony of Gary Walsh concerning the operation of the National
16 Association of Regulatory Utility Commissioners' Uniform System of Accounts (or
17 NARUC USOA) on behalf of the Company, we are asking that the Commission allow the
18 entire \$18 million be recognized in rate base. I believe ORS is mischaracterizing the effect
19 of the parties' discussions in an effort to shield itself from my criticism that its handling of
20 this issue has been inconsistent with its statutory duty to preserve continued investment in
21 and maintenance of utility facilities and work constructively to facilitate a resolution of
22 disputed issues before the Commission. I also think this desire to avoid that criticism has
23 led ORS to engage in further improper and aggressive conduct that I reference below.
24 Regardless of the motivation, Ms. Hipp's suggestion that the issues have been narrowed as
25 a result of ORS's engagement with the Company is demonstrably wrong and should be
26 rejected out of hand by the Commission.

27
28 **Q. WHAT IS THE FURTHER IMPROPER CONDUCT TO WHICH YOU REFER?**

29 A. It is several things. First, the ORS witnesses misrepresented to the Commission that it
30 engaged in discovery in this proceeding. Second, they referenced, described and/or
31 attached to their testimony Company's responses to requests issued under South Carolina
32 Code Section 58-4-55 without first obtaining Commission approval to do so. Third, ORS

1 did not challenge the Company's objections to these requests by raising them in a motion
2 before this Commission (as would have been proper), but instead improperly aired them in
3 testimony -- to create the false impression that ORS has been a victim of non-cooperation
4 by the Company. In fact, the Company has fully cooperated with ORS's audit, examination,
5 and inspection in this matter. And the testimonies of Mr. Hunnell and Mr. Loy appear to
6 be both retaliation for the Company asserting its lawful rights, and a backdoor way to
7 deprive the Company of the fair rate relief proceeding to which it is entitled.

8
9 **Q. SUBJECT TO ANY LEGAL ARGUMENTS THE COMPANY MAY WISH TO MAKE IN REGARD TO**
10 **THE PROPRIETY OF THESE TESTIMONIES AND EXHIBITS, HOW DO YOU RESPOND TO THIS**
11 **CONDUCT?**

12 A. The statements of Mr. Hunnell and Mr. Loy in this regard are not only factually inaccurate,
13 but are also an unfair and unprofessional attack on the Company, which appear to me to be
14 designed to prejudice the Company in the eyes of the Commission and deprive it of a fair
15 rate relief proceeding. I also believe that this testimony is retaliation by ORS against the
16 Company for our having raised issues regarding the nature and number of requests being
17 submitted to the Company by Mr. Hunnell.

18
19 **Q. WHAT IS YOUR BASIS FOR SAYING THAT THIS TESTIMONY IS FACTUALLY INACCURATE?**

20 A. It is inaccurate because both witnesses state that ORS conducted discovery in this case
21 when that is untrue. The requests described in these testimonies are requests for books,
22 records, and information under S.C. Code Ann. §58-4-55. None of that constitutes an
23 interrogatory, request for production or other "discovery" under Commission rules and
24 regulations. The Company addresses this distinction in its return to ORS's motion to file
25 parts of it under seal and in our motion to strike and for sanctions.

26
27 **Q. HOW ARE THESE STATEMENTS UNFAIR AND UNPROFESSIONAL?**

28 A. They are unfair and unprofessional because ORS has the ability under the statute in making
29 these requests to challenge the Company's objections before the Commission and obtain a
30 ruling as to whether the Company's objections are proper. Rather than doing that, ORS
31 decided to bypass the Commission, raised its challenge to our objections by listing its
32 putative grievances about the Company's responses in these testimonies, and thereby

1 created the false impression that the Company was not cooperative in providing ORS the
2 books, records, and information it was entitled to under the statute. I am aware that in Order
3 Number 2018-708 issued October 30, 2018, in Docket Number 2018-2-E the Commission
4 has rejected this sort of post hoc effort by ORS to claim a lack of cooperation by a
5 jurisdictional utility with respect to the provision of information to ORS in a contested
6 case, and I hope it will at the least do that again in this case to correct this conduct on the
7 part of ORS. The Company is a South Carolina business and our legitimate financial
8 interests – and those of our customers -- are disserved by this conduct by ORS.
9

10 **Q. HAVE THE COMPANY’S OBJECTIONS DEPRIVED ORS – AND IN PARTICULAR MR.**
11 **HUNNELL OR MR. LOY – OF INFORMATION THEY CLAIM TO HAVE NEEDED TO PRESENT**
12 **THEIR TESTIMONIES?**

13 A. No, they have not. The information that they claimed they needed essentially consists of
14 requests that the Company explain the meaning of statements made by some of our
15 witnesses in their prefiled testimonies, and in particular the prefiled testimony of Mr.
16 Walsh, which ORS received on March 10, 2020. This is not a request for books, records or
17 information of the Company that ORS needs to conduct an audit, inspection or
18 examination. What this is, however, is effectively an effort by ORS to conduct cross-
19 examination prior to the hearing in this matter or to improperly seek disclosure of the
20 Company’s legal theories from one of its witnesses. Mr. Walsh’s prefiled direct testimony
21 (1) explains the facts that he relies upon for his opinion that the NRUC USOA does not
22 require that any part of the \$18 million be booked to USOA accounts 114 or 104, (2) states
23 that USOA Accounting Instruction Number 21 is inapplicable, and (3) states that the
24 purchase price is properly booked in its entirety in rate base under the second sentence of
25 Accounting Instruction Number 18. If ORS truly believed that further information was
26 needed from Mr. Walsh in this regard and that it was entitled to that information, it could
27 have challenged the Company’s objection before the Commission and obtained a ruling.
28 The fact that it did not indicates to me that either ORS decided that the information was
29 not subject to production or that it did not need it. Regardless, the means by which it chose
30 to address its putative concerns is unprofessional, given the prior discussions the Company
31 had with ORS in February about Mr. Hunnell’s excess number of requests, which are

described in more detail in Mr. Daday's rebuttal testimony and in our return to the ORS motion to file under seal and our motion to strike and for sanctions.

Q. HOW WILL ORS'S CONDUCT THAT YOU HAVE DESCRIBED DEPRIVE THE COMPANY OF A FAIR RATE RELIEF PROCEEDING?

A. The implicit ORS contention that the Company has not cooperated in the ORS audit, inspection, and examination not only paints the Company in a false light, it improperly creates an issue in the merits phase of this proceeding that should have been raised long before now. ORS has had the benefit of reviewing the Company's objections to their requests for books, records and information for more than two months. It has had the benefit of reviewing the Company's testimony for an even longer period of time. If there was any basis to challenge the Company's objections, in fairness ORS should have raised them before now. That it chose not to do so indicates to me that ORS believes it can engage in inequitable and unprofessional conduct with impunity. I hope that the Commission will see this for what it is -- an effort to treat a public utility unfairly, thinking that nothing will come of it -- and emphatically reject the testimonies of Mr. Hunnell and Mr. Loy if our motion is not granted.

Q. DO YOU HAVE SPECIFIC CRITICISMS OF THE GDS REPORT PREPARED BY MR. LOY?

A. I do.

First of all, the GDS Report authored by Mr. Loy, Exhibit CEL-2, should have reached principled conclusions, including those regarding contributions in aid of construction ("CIAC"), based on due diligence and evidence. In reality, it merely speculates and surmises. I quote the Report's conclusion:

"We requested and obtained the accounting entry that was made by the City...[and from] the accounting entry, we surmised that all but about \$1.29 million of the net plant purchased was either donated or contributed to the City. Therefore, we estimate that \$16.71 million of the \$18 million purchase price is most likely donated."

Second, this Report is based on very scant evidence, and describes no due diligence by GDS. As the sentence above reflects, the Report's waffling conclusion is premised on a single accounting entry. GDS's principal task was to determine the amount of donated property that the Company's predecessor in interest, Palmetto of Richland County LLC

1 (“PRC”), received from the City. One would expect to see statements of investigation,
2 persons contacted, lists of assets, definitions/analysis of City fees, descriptions of total
3 CIAC, purported uses of specific CIAC, any commentary that third parties (courts,
4 accountants, etc.) might have made, etc. Nothing of the sort is included in the Report.

5
6 Third, this Report is internally inconsistent. GDS points out that under GASB,
7 municipalities like the City, must book CIAC to equity (not an asset and corresponding
8 liability). However, the accounting entry referenced above is inconsistent with this. (The
9 City’s records do not reflect a booking of CIAC as equity.) GDS goes to great lengths
10 describing the rules, but never connects the dots – that this accounting entry has been
11 booked in a manner inconsistent with the rules.

12
13 Fourth, GDS relies (without criticism) on this single accounting entry in the face of the
14 South Carolina Supreme Court’s holding in *Azar v. City of Columbia*. In *Azar*, the Court
15 determined that the City’s accounting practices in this regard were “highly questionable”
16 and characterized the City’s practice as “allowing these revenues to be treated as a slush
17 fund.” However, GDS again does not connect the dots –it is relying on an accounting entry
18 booked by a department of a municipality that has been accused of using CIAC to create a
19 slush fund.

20
21 Although there are other weaknesses, my final point is that on Diagram 4 on page 11, GDS
22 references “Treatment Plant CIAC”. GDS’s premise is that CIAC funded property that was
23 transferred to PRC and that CIAC cannot become part of rate base. However, these
24 expansion fees (literally called Plant Expansion Fees by the City of Columbia) were
25 precisely that – fees funding the City’s treatment plant. PRC did not acquire the plant –
26 only the collection system. This most critical point is completely missed by the Report.
27 Thus, this CIAC funds did not fund property donated to PRC.

28
29 In conclusion, this Report should not be relied upon by the Commission when estimating
30 the value of the PRC facilities purchased from the City of Columbia.

1 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

2 A. Yes, it does.